

STATE V. BALTES

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
MICHAEL BALTES,
Defendant-Appellant.

No. 35,906

COURT OF APPEALS OF NEW MEXICO

January 24, 2017

APPEAL FROM THE DISTRICT COURT OF DE BACA COUNTYM Albert J. Mitchell
Jr., District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Michael Baltes, Fort Sumner, NM, Pro se Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, J. MILES HANISEE, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant-Appellant Michael Baltes (Defendant) appeals, in a self-represented capacity, from the district court’s order entitled “order dismissing notice of appeal and remand to magistrate court[.]” [RP 106, 108; DS 1] We previously issued a notice of proposed summary disposition in which we proposed to affirm. Defendant has filed a

memorandum in opposition, which we have duly considered. Because we remain unpersuaded, we affirm.

{2} Our notice proposed to affirm on two alternative bases. [CN 2–4] First, we explained that the law of the case doctrine precluded our review of Defendant’s issues on the merits. *See Alba v. Hayden*, 2010-NMCA-037, ¶ 7, 148 N.M. 465, 237 P.3d 767. Defendant already sought to have the merits of his appeal reviewed by this Court in 2014, but this Court dismissed his appeal due to his failure to file a timely notice of appeal. We further explained that once mandate was issued by this Court, the district court’s review of the proceedings was limited to the scope of the mandate. *See State ex rel. King v. UU Bar Ranch Ltd. P’ship*, 2009-NMSC-010, ¶ 22, 145 N.M. 769, 205 P.3d 816 (“The district court was not free to enlarge or alter the issues presented in the mandate.”).

{3} Second, our notice observed that Defendant’s notice of appeal in magistrate court was untimely filed. [CN 3–4] Because Defendant is representing himself, our notice explained that we do not extend the presumption of ineffective assistance of counsel and require that he file a timely notice of appeal in the correct tribunal. *See Bruce v. Lester*, 1999-NMCA-051, ¶ 4, 127 N.M. 301, 980 P.2d 84.

{4} Defendant’s memorandum in opposition does not respond to the first basis for affirmance set forth in our notice of proposed disposition, regarding the applicability of the law of the case doctrine. Defendant has therefore failed to persuade us to depart from the initial position set forth in our notice. *See State v. Johnson*, 1988-NMCA-029, ¶ 8, 107 N.M. 356, 758 P.2d 306 (stating that when a case is decided on the summary calendar, an issue is deemed abandoned where a party fails to respond to the proposed disposition of the issue).

{5} In response to the second basis for affirmance, the untimely notice of appeal in magistrate court, Defendant explains that he is not represented by an attorney, and to the best of his knowledge, he completed and filed all necessary paperwork in a timely manner. [MIO unnumbered 2] Defendant does not, however, offer any additional facts to demonstrate that notice of appeal was, in fact, timely filed in the correct tribunal. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.”) We acknowledge that Defendant has chosen to represent himself in this appeal. However, self-represented litigants must comply with the rules and orders of the court and will not be treated differently from litigants with counsel. *See Bruce*, 1999-NMCA-051, ¶ 4.

{6} In sum, Defendant has not demonstrated that either of the two alternative bases for affirmance proposed in our notice were in error. Accordingly, for the reasons stated above and in the notice of proposed summary disposition, we affirm.

{7} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

LINDA M. VANZI, Chief Judge

J. MILES HANISEE, Judge